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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/797,860	03/10/2004	Michael Wefers	01899-P0020D GSW/TMO/DJV	3716

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ST. ONGE STEWARD JOHNSTON & REENS, LLC
986 BEDFORD STREET
STAMFORD, CT 06905-5619

EXAMINER	
KUHNS, SARAH LOUISE	

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 12/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/797,860	WEFERS, MICHAEL	
	Examiner	Art Unit	
	Sarah L Kuhns	1761	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *19 November 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-29* is/are pending in the application.

4a) Of the above claim(s) *24-29* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-23* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of claims 1-23 in the reply filed on November 12, 2004, is acknowledged.

Specification

The disclosure is objected to because of the following informalities: On page 6, paragraph 17, in the first line "szone" should be "zone".

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 6 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The specification does not make clear what is acceptable for use as a separating agent.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is not clear from the disclosure what the applicant considers to be an acceptable separating agent. The examiner has interpreted a separating agent to be any agent that prevents contamination and helps to preserve the structure of the product while being thawed and treated.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Koshida et al., U.S. Patent 4,341,803.

In regard to claims 1-9, Koshida discloses a dried food product made of pineapple (example 3), melon, or papaya (column 12, line 30). "[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even

though the prior product was made by a different process." In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985)

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Loh et al., U.S. 2004/0166228 A1 in view of Durance et al., U.S. Patent 6,312,745 and Webb, U.S. Patent 2,283,302.

In regard to claims 1 and 2, Loh discloses a dried food product wherein the food product is chopped into pieces (paragraph 34, line 12), frozen (paragraph 34, line 17), dipped (paragraph 30, line 14) in a solution having an osmotic pressure higher than water (paragraph 25, line 7), vacuum dried (paragraph 32, line 2), and packed (paragraph 38, line 1). Loh does not disclose the solution being kept at a temperature

high enough to thaw the food products or the specific steps of the vacuum drying process utilized. However, Durance discloses frozen berries being dried with hot air and then subjected to heat treatment in a vacuum of 40 mm Hg, which is 53.3 mbar (column 8, line 32), by means of microwave treatment so that a cellular break-up and puffing up of the food occurs (column 8, line 27). It would therefore be obvious to use such a method of vacuum drying in order to obtain a dried product with excellent flavor retention and an expanded, puffed, tender texture.

In regard to claim 3, Loh does not disclose milling the food product into powder. However, it is well known that dehydrated fruits can be broken into particles of any desired size to produce granulated fruit and powdered fruit as evidenced by Webb (column 6, line 42). It would therefore be obvious to break the dehydrated fruit of Loh into powdered/granulated fruit in order to provide a product that is useful in baking.

In regard to claim 4, Loh discloses the product being berries, melons, and bananas (column 4, line 1).

In regard to claim 5, it is expected that the frozen fruit of Loh has been stored and/or transported prior to thawing since it is well established to store and transport food in a frozen state.

In regard to claims 6 and 8, Loh discloses coating the food product in its frozen state (paragraph 35, line 8) with polyhydric alcohol, which effectively plasticizes the cellular structure of fruits and vegetables (paragraph 25, line 7).

In regard to claim 7, Loh discloses the food product being dipped (paragraph 30, line 14) in a solution having an osmotic pressure higher than water (paragraph 25, line

7) while frozen. However, it would be obvious to perform this step while predying with hot conditioned air because Loh teaches that over treatment of the product with the solution can result in a thick layer of frozen solution on the surfaces of the product which will require increased drying (paragraph 35, line 24) and predrying with hot conditioned air would be an obvious way to avoid over treatment.

In regard to claims 9-13, 15, 16, and 18, Loh discloses a method of producing a dried food product comprising chopping the food product is chopped into pieces (paragraph 34, line 12), freezing the food product (paragraph 34, line 17), dipping (paragraph 30, line 14) the food product in a solution having an osmotic pressure higher than water (paragraph 25, line 7), vacuum drying the product (paragraph 32, line 2), and packing the product (paragraph 38, line 1). Loh does not disclose the solution being kept at a temperature high enough to thaw the food products or the specific steps of the vacuum drying process utilized. However, Durance discloses frozen berries being dried with hot air and then subjected to heat treatment in a vacuum of 40 mm Hg, which is 53.3 mbar (column 8, line 32), by means of microwave treatment so that a cellular break-up and puffing up of the food occurs (column 8, line 27). It would therefore be obvious to use such a method of vacuum drying in order to obtain a dried product with excellent flavor retention and an expanded, puffed, tender texture.

In regard to claims 14 and 17, Loh does not disclose milling the food product into powder. However, it is well known that dehydrated fruits can be broken into particles of any desired size to produce granulated fruit and powdered fruit as evidenced by Webb

(column 6, line 42). It would therefore be obvious to break the dehydrated fruit of Loh into powdered/granulated fruit in order to provide a product that is useful in baking.

In regard to claim 19, Loh discloses the product being berries, melons, and bananas (column 4, line 1).

In regard to claim 20, it is expected that the frozen fruit of Loh has been stored and/or transported prior to thawing since it is well established to store and transport food in a frozen state.

In regard to claims 21-23, Loh discloses coating the food product in its frozen state (paragraph 35, line 8) by dipping it in a solution containing polyhydric alcohol, which effectively plasticizes the cellular structure of fruits and vegetables (paragraph 25, line 7).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah L. Kuhns whose telephone number is 571-272-1088. The examiner can normally be reached on Monday - Friday from 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SLK

MILTON I. CANO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700